IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/12/2002

CORAM

THE HON'BLE MR.JUSTICE P.K.MISRA

W.P.NO.6176 OF 1998
AND
WMP.NO.9549 OF 1998

1.Nanjunda Reddy
2.N.Sreenivasa Reddy
3.N.Gopal Reddy
4.N.Krishna Reddy ..... Petitioners

-Vs-

1.The Government of Tamil Nadu
rep. by its Secretary,
Adi Dravidar Welfare Department,
Fort St.George, Madras-9.

2.The District Collector,
Dharmapuri District.

3.The Special Tahsildar,
Harizan Welfare,
Krishnagiri,
Dharmapuri District.
..Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated within.

For Petitioner: Mr.R.Subramanian

For Respondents: Mrs.N.G.Kalaiselvi
Special Government Pleader
:O R D E R

Heard the learned counsel appearing for both parties.
2.In this writ petition, petitioners have prayed for quashing the notification under Section 4(1) of the Tamilnadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Act 31 of 1978).
3.One of the main contention raised in the writ petition relates to lack of notice as contemplated under Section 4(2) of the Act. It has been specifically asserted that the petitioners have not received any notice under Section 4(2) of the Act. It has been further stated as follows:-
"The respondents have not issued any notice to us as provided for under Section 4(2) of the Act calling upon us to show cause why the land should not be acquired. The respondents have thus not followed the mandatory provisions as contemplated under Section 4(2) of the Act."
4.In the counter it has been stated as follows:-
"The enquiry was conducted in the office of the Special Tahsildar, Adi-Dravidar Welfare, Krishnagiri on 27.10.1997. The land owners and interested persons have not availed the opportunity, and they have not chosen to send any objections towards acquisition. Therefore the Drafat Notification under Section 4(1) of Tamilnadu Harijan Welfare Schemes Act 31/78 was published in the Dharmapuri District Gazette, Extraordinary issue No.85 at page 4 dated 3.12.1997. The notice in Form-I was issued on 3.3.1998 and served on the interested persons on 5.3.1998. The award enquiry was conducted on 25.3.1998. The writ petitioner has appeared for enquiry and objected the acquisition besides, an objection petition through lawyer was presented."
5.Even though it has been stated that notice has been issued on 3.3 .1998, which was served to them on 5.3.1998 for their appearance in respect of award enquiry conducted on 25.3.1998, in fact, it is a notice in Form-3 issued under Rule 5(1) of the Rules and it is not the notice issued under Section 4(2) of the Act.
Section 4(2) of the Act runs as follows:-
"Before publishing a notice under Sub-Section (1) of Section 4, the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired."
Rule 3(i) of the Tamilnadu Acquisition of Land for Harijan Welfare Schemes Rules 1979, runs as follows:-
"Procedure for acquiring land: (i) The District Collector or the officer authorised by him in this behalf shall serve a show cause notice in Form I under Sub-Section (2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by Registered Post (Acknowledgment Due) to the last known address of the owner or any other person interested."
A mere perusal of Rule 3(i) of the Rules makes it clear that the notice has not been sent under Section 4(1) of the Act to the individual owner by Registered Post with Acknowledgment Due.

6.In the present case, in the counter it has not been specifically stated that notice had been sent by Registered Post and the owner refused to accept the said notice.

7.Be that as it may, to satisfy regarding the nature of issuance of the notice, the matter had been adjourned on several occasions, so that records could be produced by the learned Special Government Pleader. In spite of the matter had been adjourned on three occasions and 50 days have elapsed, no records have been produced by the learned Special Government Pleader.

8.In such view of the matter, one can come to the conclusion that notice as contemplated under Rule 3(i) of the Rules was never sent by Registered Post. Therefore, the Notification dated 3.12.1997 issued under Section 4(1) of the Act is quashed. The writ petition is accordingly allowed. No costs. Consequently no order is necessary in WMP.NO.9549 OF 1998 and the same is closed.

9.It is seen that the period has been expired. It is however, made clear, that it is open to the respondents to take fresh proceedings, if necessary, in accordance with law.

Index:Yes
Website:Yes
tsv.

To
1.The Secretary,
Government of Tamil Nadu
Adi Dravidar Welfare Department,
Fort St.George, Madras-9.

2.The District Collector,
Dharmapuri District.

3.The Special Tahsildar,
Harizan Welfare,
Krishnagiri,
Dharmapuri District.